

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6935

BILL NUMBER: HB 1211

NOTE PREPARED: Dec 29, 2010

BILL AMENDED:

SUBJECT: Expungement of Certain Conviction Records.

FIRST AUTHOR: Rep. Turner

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☐ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It allows a sentencing court to expunge the records of certain felony and misdemeanor convictions committed before a person was 25 years of age if 12 years have passed since: (1) the completion of the person's sentence; and (2) the satisfaction of any other obligations imposed on the person as a part of the sentence.
- B. It allows a law enforcement agency, prosecuting attorney, or court to gain access to permanently sealed records under certain circumstances. It provides that if a court orders a person's records to be expunged, the person: (1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records; and (2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records.

Effective Date: July 1, 2011.

Explanation of State Expenditures: The Indiana State Police (ISP) maintains the criminal history data base. Any additional staff and computer time required would likely be within their existing level of resources.

Background Information: Under current law, courts can seal arrest records from disclosure and order limited criminal history information to be either destroyed or restricted under certain conditions.

Arrest Records – An individual may petition a court to expunge arrest records if: (1) no criminal charges are

filed or (2) charges were dropped due to mistaken identity, no offense was committed, or because no probable cause existed. If the arrest is expunged, no information about the arrest can be placed or retained in any criminal history repository at the state, regional, or local level.(IC 35-38-5-1)

Limited Criminal History – A person may petition ISP to limit access to an individual’s limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime. Exceptions include individuals who wish to volunteer services involving children under the discretion of a social services agency or nonprofit corporation, or if the individual is being sought by the parent locator service of the Child Support Bureau in the Department of Child Services. (IC 35-38-5-5)

ISP reports the number of requests to limit access to criminal history files over the past three years in the table below.

Requests to Limit Access to Limited Criminal History Files Maintained by Indiana State Police by Calendar Year			
	2008	2009	2010 (Nov. 2010)
Requests for Limiting Access of Records	79	74	80
Request Denied	4	10	21
No Action: ISP doesn’t hold record	4	8	22

No information was available on the number of criminal convictions where sentences have been vacated or findings of guilt have been set aside. Additionally, it is not known how many individuals would qualify for record expungement under the provisions of the legislation. Expungement would eliminate access to criminal history files to noncriminal justice agencies (i.e., companies that specialize in background checks).

LSA examined the records of 29,081 offenders who were incarcerated on October 14, 2010. Of these, 589 offenders were sentenced for a nonviolent crime before they were 25 years of age and had no prior felony convictions.

Explanation of State Revenues: *Court Fee Revenue:* The legislation allows an individual whose records were expunged to bring civil action under certain circumstances. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record. In addition, some or all of the judicial salaries fee (\$17), the public defense administration fee (\$3), the court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: LSA anticipates that courts will not incur any out-of-pocket costs under this bill.

Any new costs to the state court system will depend on how often ex-offenders file these petitions and whether the judge accepts or denies the petition. If the court accepts the petition, then the court would likely hold a hearing to determine whether the individual would qualify for having records permanently sealed.

If a law enforcement agency, prosecuting attorney, or court submits a written application to gain access to permanently sealed records, the workload of individual courts could increase. The impact will depend on

whether the court reviewing the application needs to hold hearings to discuss the reason for releasing the records and whether the ex-offender contests the application. If applications are not contested, then the costs to the court are likely to be minimal.

The legislation allows a law enforcement agency, prosecuting attorney, or another court to submit a request to an expungement-granting court for access to these sealed records provided there is good cause. If good cause is demonstrated, then the expungement-granting court is required to order the records unsealed and provide access to the requesting party.

Background Information: Under current law, an individual has no legal foundation to petition the court to expunge the records of an arrest unless no criminal charges were filed, all criminal charges were dropped, the individual had been mistaken for another person, no offense had been committed, or there was an absence of probable cause. Regulations concerning juvenile record expungement are more relaxed than petitions for adult record expungement. When filing for expungement, the request is filed under the original cause number that was assigned when the case was first filed. The Division of State Court Administration reports there would be no fees assessed as these fees would have been paid when the case was first disposed.

The Division of State Court Administration reports that the number of expungement requests are indeterminable. This information is specific to particular cases and is not reported to the Division. Petitions for the disclosure of arrest records are rarely filed, and information concerning requests are not uniformly collected. Additionally, the Division of State Court Administration does not require courts to report how many cases have been put aside or how many convictions have been vacated.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Indiana State Police.

Local Agencies Affected: Trial courts, Local law enforcement agencies.

Information Sources: Indiana State Police

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